

# Resolution of Complaints

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**LETTER OF UNDERSTANDING RE**  
**ILWU-PMA**  
**Special Grievance/Arbitration Procedures**  
**For The Resolution Of Complaints Re**  
**Discrimination And Harassment Under Section 13.2 Of The**  
**Pacific Coast Longshore & Clerks Agreement**

## **I. SECTION 13.2 COMPLAINTS COVERED BY SPECIAL PROCEDURES**

All registered and casual longshore workers and marine clerks, as well as PMA, all ILWU locals and employers covered by the PCLCA, have the right to file a complaint concerning incidents of discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of the PCLCA (including at work sites, joint dispatch halls, training sites, and other locations, when reasonably related to employment covered by the PCLCA) based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), national origin, or religious or political beliefs, or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment. All grievances of this type are referred to in this document generally as “Discrimination and Harassment” grievances. A detailed statement of policy, rules of conduct and penalty guidelines for proven offenses are set forth in the ILWU-PMA Equal Employment Opportunity Policy, copies of which may be obtained from any PMA or ILWU local office and joint dispatch halls. Special complaint forms for claims of Discrimination and Harassment shall be available to all persons upon request at all PMA and ILWU local offices and joint dispatch halls. Discrimination and Harassment grievances shall be processed pursuant to the following special grievance/ arbitration procedures:

## **II. BRIEF SUMMARY OF THESE SPECIAL SECTION 13.2 PROCEDURES**

The basic steps for processing a grievance of Discrimination and Harassment under the Special Procedures are as follows. This summary only provides highlights of the Special Procedures. Please see Section III, below, for more details.

1) Grievances are to be filed within ten (10) calendar days of the incident by facsimile or mail with the AREA ARBITRATOR, with a copy sent by facsimile or mail to the JPLRC c/o the local PMA office, as stated on the Special Section 13.2 Grievance Form. (The AREA ARBITRATOR may, in his/her discretion, excuse late filings in certain circumstances, described below).

2) A hearing before the AREA ARBITRATOR, recorded by a court reporter, will be held within fourteen (14) calendar days (or, in certain circumstances described below, within thirty (30) calendar days) after the grievance is received by the AREA ARBITRATOR.

3) Any party may, no later than five (5) calendar days before the hearing, ask the AREA ARBITRATOR to direct witnesses to appear.

4) The AREA ARBITRATOR will issue a written decision within fourteen (14) calendar days after the close of the hearing.

5) Any party may, within ten (10) calendar days of being mailed the Area Arbitrator's decision, file an appeal by facsimile or mail with the COAST APPEALS OFFICER, with a copy sent by facsimile or mail to the JPLRC c/o the local PMA office. Appeals shall be based solely on the written record of the hearing.

6) Any party may, within ten (10) calendar days of the COAST APPEALS OFFICER's receiving the appeal, file a response or opposition.

7) A ruling on the appeal shall be sent out within fourteen (14) days of the COAST APPEALS OFFICER's receiving the appeal.

### **III. DETAILED SPECIAL GRIEVANCE PROCEDURES**

The following are the detailed provisions of the special grievance procedures for claims of Discrimination and Harassment under Section 13.2 of the PCLCA:

1) A complaint alleging discrimination or harassment (including hostile work environment) in connection with any action subject to the terms of the PCLCA based on race, creed, color, sex (including gender, pregnancy, sexual orientation), age (forty or over), national origin, or religious or political beliefs, or alleging retaliation of any kind for filing or supporting a complaint of such discrimination or harassment shall be filed by the grievant, or the Union on his/her behalf, or by PMA or its member companies, by sending the Special Section 13.2 Grievance Form by facsimile or mail to the AREA ARBITRATOR, with a copy by facsimile or mail to the local JPLRC, c/o the local PMA office. The AREA ARBITRATOR and/or the local PMA office shall immediately send a copy of the complaint, showing date of receipt, to the local PMA office, the involved ILWU Local Union(s), the Joint Coast Labor Relations Committee ("JCLRC"), any person accused of any wrongdoing, and any involved Employer. Complaints must be filed within ten (10) calendar days of the alleged misconduct in order to be timely. The AREA ARBITRATOR may in his or her discretion excuse any late filings only for reasons stated in Section 17.411 of the PCLCA up to six (6) months.

2) The JPLRC or the AREA ARBITRATOR may issue temporary directives pending the grievance proceedings to protect the grievant or the integrity of the investigation, including but not limited to temporary job re-assignment, dispatch, transfer, or separation of the accused from the grievant.

3) Immediately upon receipt of a complaint, the AREA ARBITRATOR shall issue a notice of hearing for a date not more than fourteen (14) calendar days after the date the complaint was received. The AREA ARBITRATOR may schedule the hearing up to thirty (30) calendar days after receipt of the grievance when his or her availability or workload so requires. The AREA ARBITRATOR shall ensure that written notice of the hearing is provided to the grievant, the accused, the involved Employer, PMA, and the appropriate ILWU Local(s).

4) The grievant and any longshore worker or clerk accused of Discrimination or Harassment may each have one registered (Class A or Class B) worker to assist and represent him/her in these proceedings. The grievant and such accused worker may also instead request in writing that their ILWU Local appoint a union representative, who is acceptable to them, to assist them, which appointment shall be made within two (2) calendar days of such request. In cases where the grievant and accused worker are represented by the same ILWU Local, the Local shall assign separate union representatives, who are acceptable to them, to assist them. Union representation will be provided in all cases where requested regardless of whether the Union agrees or disagrees with the merits of the complaint and such representation shall not be considered as any indication of the Local's position concerning the complaint.

5) The arbitration hearing shall be transcribed by a court reporter. All witnesses shall be duly sworn to testify truthfully. No attorneys shall be allowed to participate in any of the proceedings or be present in the hearing room. Only parties, (including two persons on behalf of, respectively, the involved ILWU Local(s), PMA, the involved Employer, those representatives designated under paragraph four (4)), and witnesses directly involved in the matter, may attend the hearing as the proceedings are to be treated as confidential to protect the privacy rights of those involved. Non-party witnesses shall be excluded from the hearing except when testifying, unless otherwise permitted by the AREA ARBITRATOR. The AREA ARBITRATOR may exclude participants in order to take testimony on the record of an unusually sensitive or embarrassing nature.

6) The AREA ARBITRATOR shall, on his/her own initiative or upon request by the grievant or accused, direct in writing all material witnesses to appear at the arbitration hearing. Any individual, Employer, ILWU Local or PMA official who fails to appear at the hearing upon at least three (3) calendar days prior notice shall be subject to appropriate penalties as determined by the JPLRC or the AREA ARBITRATOR.

7) No post-hearing briefs shall be filed with the AREA ARBITRATOR.

8) As a condition for providing reporting services, the court reporter shall, within five (5) calendar days of each hearing date, deliver the original plus three copies of the hearing transcript, including all exhibits, as follows: The original to the AREA ARBITRATOR, and three copies to the JPLRC, c/o the local PMA office (one copy for the ILWU Local Union, one copy for PMA, and one copy for the COAST APPEALS OFFICER's use in the event of an appeal). The parties may obtain from the JPLRC a copy of the transcript upon request. No later than fourteen (14) calendar days after the close of the hearing, the AREA ARBITRATOR shall issue his or her written decision. The AREA ARBITRATOR is empowered to issue all appropriate remedies, except that any request for elevation, registration or casual status shall be referred to the JPLRC, to be processed under §17.4 of the PCLCA as provided in §13.3 of the PCLCA. The AREA ARBITRATOR shall ensure that a copy of the decision is immediately sent to all parties.

9) The decision of the AREA ARBITRATOR in cases covered by these special procedures shall be final and binding on all parties unless a timely appeal is filed as specified below.

10) Any party may, within ten (10) calendar days of the date a copy of the AREA ARBITRATOR'S decision is mailed to such person or organization, file an appeal with the COAST APPEALS OFFICER. To be timely, the appeal must be mailed or faxed to the COAST APPEALS OFFICER, with a copy by mail or facsimile to the JPLRC, c/o the local PMA office, within the ten (10) calendar day period, and it must contain all the argument intended as support for the appeal. The COAST APPEALS OFFICER shall ensure that copies of the appeal, if timely filed, are immediately sent to the AREA ARBITRATOR, Local Union(s), PMA and all other parties involved with a cover letter specifying the right to file a response or opposition within ten (10) calendar days of when the COAST APPEALS OFFICER received the appeal. Upon receiving a copy of an appeal filed with the COAST APPEALS OFFICER, the local PMA office shall immediately forward the written record of the hearing (which is the transcript of the hearing and its exhibits, and the decision received from the AREA ARBITRATOR) to the COAST APPEALS OFFICER.

11) An appeal shall be based solely on the written record of the hearing and no appeal hearing shall be permitted. The COAST APPEALS OFFICER may affirm, vacate or modify the decision of the AREA ARBITRATOR, including but not limited to increasing or reducing the penalty, within his/her sound discretion.

12) A ruling on the appeal shall be sent out within fourteen (14) calendar days of when the COAST APPEALS OFFICER received the appeal. An appeal may be denied before receipt or consideration of any response or opposition at the discretion of the COAST APPEALS OFFICER. No other appeal shall be available.

13) The JPLRC shall promptly implement the remedies provided in the final decision. No other appeals or proceedings, including appeals to the JCLRC or the Coast Arbitrator, shall be allowed in cases involving Section 13.2 claims in order to ensure their final resolution with all due speed.

14) In the event the AREA ARBITRATOR is not available to hear a case within the thirty (30) calendar day time frame under these Special Procedures, the JCLRC shall appoint a Special Procedures Relief Arbitrator to timely conduct the hearing for that particular case.

15) In the event any one AREA ARBITRATOR'S workload becomes prohibitive, the JCLRC shall appoint a special arbitrator whose sole function shall be the adjudication of grievances under the Special Section 13.2 Procedures.

16) The term "days" in this document means calendar days.

17) These provisions are subject to modification by the JCLRC.

18) The procedures set forth in this Policy may be flexibly applied in particular cases when the facts and circumstances warrant it. The time lines for accomplishing particular steps of the procedure are intended as guidelines, not strict time limits, which may be extended or waived in appropriate circumstances. Failure to strictly comply with the time lines shall not constitute a violation of the Policy.

Executed on August \_\_, 2001, in San Francisco, California.

For the Union For the Employers

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